

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

KNOWN LITIGATION
HOLDINGS, LLC

v.

HEALY & HEALY, et al.

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C.A. No. 13-052ML

MEMORANDUM AND ORDER

Pending before me for determination (28 U.S.C. § 636(b)(1)(A)) is Defendants' Motion to Compel Plaintiff to Produce Documents. (Document No. 25). Plaintiff objects and represents that "it has produced all documents in its possession, custody, or control." (Document No. 27-1 at pp. 4-5). On March 5, 2014, I held a telephone conference with counsel regarding the Motion to Compel and, as an interim step aimed at narrowing or resolving this discovery dispute, directed Defendants to depose Mr. Craig Baker regarding the document collection and production efforts of Plaintiff.¹ Mr. Baker's deposition was held on April 3, 2014. Pursuant to an Order dated May 2, 2014, both sides filed status reports summarizing the remaining issues in dispute. (See Document Nos. 32, 35 and 38). A hearing was held on June 10, 2014. After reviewing the parties' respective submissions and considering their arguments, Defendants' Motion to Compel is resolved as set forth below.

Under Rule 34(a)(1), Fed R. Civ. P., a party may request production of documents in the responding party's "possession, custody, or control." Here, Plaintiff represents that it has produced

¹ Defendants assert that Plaintiff's document collection was partially the result of search terms unilaterally selected by Mr. Baker. Since the search terms have never been disclosed to Defendants, they argue that they are unable to assess the effectiveness of the search. Accordingly, Plaintiff's counsel is ORDERED to disclose the search terms to Defendants' counsel within fourteen days and to meet and confer in good faith if there is a dispute as to the breadth and effectiveness of the initial search.

the responsive documents in its possession or custody and thus the issue boils down to production of documents under Plaintiff's "control."

First, as to Admirals Bank, Defendants' Motion to Compel is moot because the Bank has apparently refused to voluntarily produce additional documents to Plaintiff and Defendants have elected to directly pursue any such documents by way of a third-party subpoena. Second, as to the remaining individuals and entities² who may possess relevant documents, Plaintiff has not presently shown that it lacks "control" of these entities for purposes of obtaining responsive documents. "Control does not require that the party have legal ownership or actual physical possession of the documents at issue, but rather 'the right, authority or practical ability to obtain the documents from a non-party to the action.'" Bush v. Ruth's Chris Steak House, Inc., 286 F.R.D. 1, 5 (D.D.C. 2012) (quoting In re NTL, Inc. Sec. Litig., 244 F.R.D. 179, 195 (S.D. N.Y. 2007)). Rather, the dispute appears to center on the wording and scope of the document requests to be communicated to them by Plaintiff. Predictably, Defendants seek broad requests to ensure full and complete production, while Plaintiff seeks more narrow and/or document specific requests to avoid duplication and control expenses. In an effort to resolve this dispute, the parties engaged in a dialogue about the content of the letters but no agreement was reached.

In order to bring this dispute to conclusion, the parties are ORDERED to file proposed document requests for these individuals and entities within twenty-one days for the Court's review along with a position statement, not exceeding five pages, which supports its proposal. After reviewing the reasonableness of such proposals in the context of the claims and defenses in this

² These have been identified as Blum Shapiro, an accounting firm; Venable, LLP, a law firm; Young and Associates, a regulatory consultant; Paul Schneider, an accountant; and Richard S. Mittleman, a lawyer. Each of these entities or individuals apparently performed services for Domestic Bank, Plaintiff's assignor of the claims in this case.

litigation and the principles embodied in Rule 26(b)(2), Fed. R. Civ. P., the Court will select the most reasonable version of the requests and ORDER Plaintiff to promptly communicate them to the individuals and entities in question.³

For the foregoing reasons, Defendants' Motion to Compel (Document No. 25) is GRANTED in limited part as provided herein and otherwise DENIED without prejudice.

SO ORDERED

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
June 12, 2014

³ The parties are, of course, encouraged to meet and confer and to reach a compromise on an agreed form of request in lieu of this "all or nothing" approach.